IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.418 OF 2005

Mr. Champak Lakhamsingh Savla
and another ... Applicants

versus

The State of Maharashtra ... Respondent

...

Mr. B.K. Barve with Mr. A.P. Mundargi, for the Applicants.

Mr. V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

2nd February 2005

P.C.:

1. Heard Counsel for the parties. Perused the record. The Court below, although granted bail to 11 out of 14 accused, has rejected application preferred by the present Applicants on the reasoning that there was ample evidence against the present Applicants that they had

received the amount from various investors and was entrusted to Dhananjay Ved. The reason as weighed with the Court below clearly overlooks the other aspects, which can be discerned from the record placed before the Court. The statement of Damji Nimji Dangar dated 31st August 2004 clearly concedes the position that till September 2003, the Applicants had stood to their commitment and paid the principal as well as interest amount to the investors at the agreed rate of 15 per cent. p.a. The problem started only from October 2003, as stated by the Appalicants, due to reasons beyond their control and that fact was discussed with the investors who ultimately decided to convene a joint meeting. In the said committee meeting held in January 2004, Dhananjay Jamnadas Ved accepted the fact that amounts have been received by him. Consequent to the deliberations which took place in the said meeting, declaration has been given by said Dhananjay Ved in writing, also indemnifying to all people, who were expected to receive money from the persons, including the Applicants, that he would himself pay that amount. In addition to the declaration, as

agreed between the committee members of investors and said Dhananjay Ved, he has given power of attorney in favour of the named persons authorising them to deal with his properties referred to in the said power of attorney, which would have secured at least sum of around Rupees four crores. It is seen that the committee members took over the said property for sale, but for some reason, the issue remained unresolved and eventually, complaint has been filed on 31st August 2004 for offences under sections 406 and 420 of the Indian Penal Code. From the events that unfolded, it is difficult to accept that the Applicants had intention to deceive right from the inception. In fact, the liability to repay the amount has been accepted by Dhananjay Ved in the joint meeting held between the parties and thereafter, he has not only executed declaration indemnifying the Applicants, but also executed power of attorney in favour of the committee members, authorising them to dispose of the properties. Viewed in this perspective, merely because amounts have been accepted by the Applicants from the various investors by itself does not take the matter any further.

2. Property worth Rs.1.5 crores of the present Applicants is also taken over. The Applicants are willing to offer that property for public auction, so that the sale proceeds can be utilised for settling the claims of the investors.

3. Learned A.P.P. submits on instructions that there is apprehension that the Applicants may create impediments for auction sale of the properties in question. I see no reason to entertain this apprehension as the Applicants have volunteered before the Court through Counsel that such a course be adopted and that is one of the reason which has weighed with me for granting bail to the Applicants. If the property in question is insufficient to meet the outstanding liability, it will be open to the investigating officer to take such action against the Applicants as may be advised and permissible by law.

4. Be that as it may, now, charge sheet has been filed. Taking overall view of the matter, the

Applicants deserve to be enlarged on bail in connection with CR.No. 64/2004 registered with G.B., C.B., C.I.D., E.O.W. Unit No. 3, Bombay, on the following terms.

(A) The Applicants shall furnish personal bond in the sum of Rs.2 lakhs each with one or two local sureties in the like amount.

(B) The Applicants shall report to the investigating officer as and when required as it is stated that investigation is still in progress with regard to certain aspects of the case.

(C) The Applicants shall co-operate the trial Court for early disposal of the trial. If the trial Court is of the opinion that the Applicants are in any manner responsible for delaying the disposal of the trial, that fact be recorded in the roznama, which can be a ground for cancellation of bail.

(D) The Applicants shall not leave the jurisdiction of the concerned police station without giving prior intimation to the investigating officer and the trial Court.

(E) The Applicants shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)